

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 406 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MAHESHCHANDRA K TRIVEDI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PARDIWALA FOR MR KB ANANDJIWALA for Petitioner

MR.BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/09/1999

ORAL JUDGEMENT

#. Heard Mr.Pardiwala, learned counsel appearing for Mr.Anandjiwala, for the revisioner. Rule. Mr.B.Y.Mankad, learned APP waives service of rule for respondent State.

#. This a Revision Application filed by the aggrieved accused under Section 397 read with Section 401 of Code of Criminal Procedure. According to the petitioner, he

had applied for production of document under Section 91 of Criminal Procedure Code 1973 and according to him, production prayed for the documents were relevant to the case of prosecution and also to his defence. To have effective and pinpointed cross examination, documents were important and the Court has jurisdiction to issue summons to a witness for the purpose under Section 91 of CrPC.

#. While issuing notice, this Court has granted interim relief in terms of Para-6(D) till further orders vide order dated 28th July, 1999 so it can legitimately be inferred that the trial of Special Case No : 15/1986, which is fairly an old matter, is stayed. Hence, with the consent of learned counsels appearing for both the parties, this matter is taken up for final hearing today.

#. It is submitted that while analysing the findings of the learned Sessions Judge dealing with the application Exh.18 preferred in Special Case No : 15/1986, it is clear that the ratio laid down in the judgment reported in case of STATE OF GUJARAT VS. SHYAMLAL MOHANLAL CHOKASHI AND OTHERS, AIR (SC) 1965 1251 has not been correctly followed and this judgment has been misread by the learned Judge. After going through the relevant paragraphs No.29 & 30 of the judgment, Mr.Pardiwala, learned counsel appearing for the revisioner further submitted that this judgment provides a shelter to the accused where prosecution intends to compel the accused for production of any document, if the document is or are in custody of that accused. Merely because the trial was on, the learned Sessions Judge ought not to have rejected the application, considering the other privilege or rights conferred by the statute on the accused. Their Lordships have observed in the case of STATE OF GUJARAT VS. SHYAMLAL MOHANLAL CHOKSI, (Supra) in paragraphs No : 29 & 30 that;

"29. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it give effect it. For example, in S.175 it is provided that every person summoned by a Police Officer in a proceeding under S.174 shall be bound to attend and to answer truly all question other than tendency to expose him to a criminal charge or to a penalty or forfeiture. S.343 provides that except as provided in Ss.337 and 338, no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to

disclose or withhold any matter within his knowledge. Again, when the accused is examined under S.342, the accused does not render himself liable to punishment if he refuses to answer any questions put to him. Further, now although the accused is a competent witness, he cannot be called as a witness except on his own request in writing. It is further provided in S.342A that his failure to give evidence shall not be made the subject of any comment by any parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

30. It seems to us that in view of this background the legislatures it were minded to make S.94 applicable to an accused person, would have said so in specific words. It is true that the words of S.94 are wide enough to include an accused person but it is well recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide Craies on Statute Law, p.177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide Craies on Statute Law, p.187).

#. Mr.Pardiwala has also drawn attention of this Court to a unreported judgment of this Court delivered in case of SHRI BHAVESH CHANDRAKANT BHATT VS. STATE OF GUJARAT in Criminal Revision Application No : 405 of 1998 dated 28th July, 1998 (Coram : Miss R.M.Doshit, J.) While dealing with the above revision application, the learned Judge has considered the provisions of Section 91 and Section 243 (2) of the Code of Criminal Procedure. Merely because the accused is given a right, independently off all other provisions under Section 243(2) of the Code of Criminal Procedure, a privilege to apply under Section 91 under the Code is not taken away or cannot be taken away by the prosecution, by taking technical or improper objection, such objection was taken before the learned Sessions Judge by the learned APP who was conducting the prosecution for the State. This Court in case of SHRI BHAVESH CHANDRAKANT BHATT VS STATE OF GUJARAT (SUPRA) has observed as under;

"The next judgment which Mr.Pardiwala has relied upon is that of High Court of Andhra Pradesh in the matter of K.V. Rama Krishna Reddy Vs. The State (1975 Cri.L.J. 980), while dealing with a

similar question, the High Court of Andhra Pradesh held that, " ... The right given to the Court under Section 91 is undoubtedly different from right given under Section 243 (2), Criminal Procedure Code. It cannot be argued that the accused has no right to apply for the production of any document at the stage of framing of charge or at any other stage before the accused had entered upon the defence, as Section 91 CrPC gives such a right to the accused independent of the provisions of Section 243(2) CrPC. The right given to the accused under Section 91 is the general right and it is in no way, circumscribed or controlled by Section 243(2) CrPC. The accused is entitled to invoke the benefit given under Section 91 at any stage, may it be at the stage of investigation or any other proceeding under the Code." A similar view has been expressed by the Division Bench of Andhra Pradesh High Court in the matter of Dr.Raghotham (1963(2) Cr.L.J.252)."

#. The ratio of the judgment of STATE OF GUJARAT VS. SYAMLAL CHOKSI (SUPRA) says about a shelter provided to the accused. Merely because the trial is on, the weapon which is with the accused under that very S.91 does not remain suspended. It can be used even strategically if the accused feels that he wants to avoid the formality of leading evidence in defence. He can request the Court for production of the document from the prosecution side. The accused can legitimately refer such document, even while cross examination of any witness by referring such documents. He can recall the witnesses if examined, provided, permitted by the Court and put such question as to certain documents and can carve out the line or alternative line of defence if such documents are brought on record very well in time. The accepted principle of criminal jurisprudence of this Country says that the prosecution should be fair enough and has no privilege to put a curtain on any oral or documentary evidence. The privilege given under Section 91 of the Code of Criminal Procedure if is not used at proper time or stage then, the defence of the accused might be prejudiced. So at any stage, whether at the stage of framing of charge or at any other stage before the accused is compelled to enter into defence, he can legitimately pray that the prosecution be asked to produce certain documents. It is obvious that failure in compliance of the order, if passed below such application, can open another window to the defence side. The learned Sessions Judge while dealing with the application, has not considered all

these aspects which were very much relevant looking to the facts and circumstances. It is important to note that it was not the say of the prosecution at the time of resisting the application filed by the accused, that the documents asked by the accused are irrelevant nor it is the finding of the learned Sessions Judge that this application is moved only with a view to delay the proceedings and he is not satisfied about the relevance of the documents asked by the applicant accused in the midst of the trial. This court is of the view that the submission made by Mr.Pardiwala that the judgment of STATE OF GUJARAT VS. SHYAMLAL (Supra) was misread by the learned APP at the time of advancing submission before the learned Sessions Judge and therefore only erroneous finding has been recorded is well founded. The error requires to be corrected and the prosecution should be asked to produce the relevant documents as prayed in the application Exh.18. It would be proper to observe that it will be open to the prosecution to state before the learned Sessions Judge that any of the documents for which the application is filed, if not available to the prosecution or they are not in custody, then in that event, the Court will have to appreciate the entire contingency in light of the case put forward by the prosecution and / or defence.

#. For the reasons recorded above, this Criminal Revision Application is allowed. Impugned order dated 3-7-1999 passed by the learned Additional Sessions Judge / Special Judge - Kutch at Bhuj below application Exh.18 in Special Case No : 15/86 is hereby quashed and set aside. Application Exh.18 is granted. Learned Additional Sessions Judge will issue summons as prayed for in Exh.18.

#. Rule is made absolute accordingly. No costs.

Date : 6-9-1999 [ C.K.Buch, J. ]

#kailash#